Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Applications of WorldCom, Inc. and	)	CC Docket No. 97-211
MCI Communications Corporation for	)	
Transfer of Control of	)	
MCI Communications Corporation to	)	
to WorldCom, Inc.	)	

REPLY COMMENTS OF THE COMMUNICATIONS WORKERS OF AMERICA IN SUPPORT OF THE MOTION TO DISMISS (PETITION TO DENY) FILED BY GTE SERVICE CORPORATION CONCERNING THE APPLICATIONS OF WORLDCOM, INC. AND MCI COMMUNICATIONS CORPORATION FOR PROPOSED TRANSFER OF CONTROL OF MCI TO WORLDCOM

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Dated: January 27, 1998

INTRODUCTION

The Communications Workers of America ("CWA" or "the Union" herein), respectfully files the instant reply comments in support of the Petition to Deny (Motion to Dismiss) filed by GTE Service Corporation ("GTE"), relating to the applications of MCI Communications Corporation ("MCI") and WorldCom, Inc. ("WorldCom"), for transfer of control of MCI to WorldCom. On January 12, 1998, the Federal Communications Commission ("FCC"), released a public notice, DA 98-49, seeking comments on the Petition (Motion to Dismiss) filed by GTE in the applications concerning MCI and WorldCom in the case referred to as CC docket No. 97-211.[1]

CWA concurs fully in the points and arguments raised by GTE in its petition relating to the failure of MCI and WorldCom to meet their evidentiary burden in their applications, by providing detailed analysis of the relevant market and impact of their proposed merger. While the Petition filed by GTE raises a number of objections to the proposed merger, many of which CWA has also raised in its comments to the FCC filed on January 5, 1998 (amended January 6, 1998) and in reply comments filed with the FCC on January 26, 1998, the primary argument raised by GTE, about which the FCC has solicited comments, relates exclusively to the failure of MCI/WorldCom to provide documents, materials, and other analysis as required by the FCC in this type of proposed merger application. CWA agrees that the applications of MCI and

[1] Comments on the GTE Petition are due within 15 days of the date of release (or January 27, 1998). These comments in support of the petition, therefore, are timely filed.

WorldCom[2] are severely deficient in that they fail to define the relevant product or geographic market; they do not identify the most significant market participants; and they fail to provide analysis of the effects of the proposed merger on market competition as required by prior Commission decisional rule.[3] It is beyond dispute that the burden of proof is squarely on the applicants to show how their proposed merger would impact market forces by coming forward with persuasive objectively defined data and analysis. This, the applicants have utterly failed to do. Consequently, in addition to the anti-competitive nature of the applications as a basis for dismissal, CWA urges that the applications of MCI and WorldCom be summarily dismissed by the FCC for their failure to comply with Commission requirements. The basis of CWA's comments in support of GTE's petition is as follows:

APPLICANTS UTTERLY FAIL TO ADDRESS THE BELL ATLANTIC/NYNEX STANDARD PREVIOUSLY ANNOUNCED BY THE COMMISSION

The proposed merger of WorldCom and MCI represents the combination of two giants in the telecommunications industry. Together, they would create a combined entity that would

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[2] In response to GTE's Petition to Deny, WorldCom/MCI have now submitted comments in the form of argument describing the innocuous nature of the merger. The applicants' latest proffer does not include detailed analysis of objective criteria, such as the product market, key players, and potential competitive effects, as is their burden. Rather, it merely recites their rhetorical claims of a minimal impact on market competition. Consequently, the comments add nothing, and are irrelevant, to the consideration of GTE's petition.

[3] *See* In the Applications of NYNEX Corp., Transferor, and Bell Atlantic Corp., Transferee, for Consent to Transfer Control of NYNEX Corporation and its Subsidiaries, *Memorandum Opinion and Order*, FCC 97-286, File No. NSD-L-96-10 (Aug. 14, 1997) (hereinafter "*Bell Atlantic/ NYNEX Order*").

have monopoly control of the Internet backbone market, that would delay facilities-based competition for residential customers in the local exchange, and would further concentrate the long distance and international telecommunications markets. Given these anti-competitive impacts of the merger, which are raised by the applications, it is incumbent on the applicants to provide facts, evidence and studies that demonstrate, to the Commission, and other interested parties, that the applications are "in the public interest." Having failed to provide factual data necessary to undertake any meaningful analysis of the effects of the proposed merger, as required by the *Bell Atlantic/NYNEX Order*, the applications must be dismissed.

STANDARD REQUIRED OF MERGER APPLICATIONS

Pursuant to Title II and Title III of the Communications Act of 1934, as amended, 47 U.S.C. Sections 214(a) and 310(d), the Commission has the legal obligation to determine whether an applicant's request for transfer of control of certificates or licenses serves the "public interest, convenience, and necessity." This is a standard that must be borne by the applicant, and not the commission.[4] If the Commission does not have sufficient information to make this determination, then it may deny the application outright.[5] As the Commission explained in the *Bell Atlantic/NYNEX* case:

> The public interest standard is a broad, flexible standard, encompassing the 'broad aims of the Communications Act.' These 'broad aims' include, among other things, the implementation of Congress' 'pro-competitive, de-regulatory national policy framework' for telecommunications, 'preserving and advancing' universal service,

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[4] *Bell Atlantic/NYNEX Order*, at 3, 16.

[5] 47 U.S.C. § 309(e) (1997).

> and 'accelerat[ing] rapidly private sector deployment of advanced telecommunications and information technologies and services. . .
>
> In order to find that a merger is in the pubic interest, we must, for example, be convinced that it will enhance competition. A merger will be pro-competitive if the harms to competition — i.e., enhancing market power, slowing the decline of market power, or impairing this Commission's ability properly to establish and enforce those rules necessary to establish and maintain the competition that will be a prerequisite to deregulation — are outweighed by benefits that enhance competition. **If applicants cannot carry this burden, the applications must be denied.**[6]

More simply stated, the Commission formulated this easy analysis: "it is incumbent upon **applicants** to **prove** that, on balance, the merger will enhance and promote, rather than eliminate and retard, competition."[7]

COMMISSION ADOPTS SPECIFIC CRITERIA FOR ANALYZING PUBLIC INTEREST

Due to a spate of recent mergers in the telecommunications industry,[8] the Commission has formulated clear and concise criteria which an applicant must address in any application which has the potential to impact adversely market competition. The criteria are as follows:

1. An applicant must first "defin[e] the relevant markets, both in terms of the relevant products and geographic scope".[9] This means identification of the product or services involved

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[6] *Id.* at 3, ¶2 (emphasis supplied).

[7] *Id.* at 4, ¶3 (emphasis supplied).

[8] *See* Pacific Telesis Group and SBC Communications, Inc., *Memorandum Opinion and Order*, Report No. LB-96-32, FCC 97-28 (Jan. 31, 1997); British Telecommunications plc, *Memorandum Opinion and Order*, GN Docket No. 96-245, FCC 97-302 (Sept. 24, 1997); *see also* Pittencrieff Communications, Inc. and Nextel Communications, Inc., *Memorandum Opinion and Order*, CWD No. 97-22, DA 97-2260 (Oct. 24. 1997).

[9] *Bell Atlantic/NYNEX Order*, at 5 and 24; and ¶¶ 49-50.

in the merger for which there are no close demand substitutes. The applicant must identify the geographic market, aggregating "those consumers with similar choices regarding a particular good or service in the same geographic area."[10]

2. The second criteria in the Commission's analysis calls for "identif[ication]" of the "most significant market participants,"[11], or "those carriers whose capabilities and incentives make them most likely to enter and, within that group, those most likely to have a significant pro-competitive effect on the relevant markets."[12] It is necessary to identify both the number and market share of principal players in order to determine whether the removal of any of these market participants could have a detrimental impact on competition.

3. It is then necessary to examine the potential "effects of the proposed merger on competition in the relevant markets, such as whether the merger is likely to result in either unilateral or coordinated effects that enhance or maintain the market power of the merging parties."[13] This is the aspect of the analysis which requires most detail. The applicants are required to show that their merger will not hamper competition. If it will, then the applicants must also demonstrate that such negative impact will be sufficiently off-set by other enhancements, or mitigating factors, that balance any competitive harm, such as "cost reductions,

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[10] *Id.* at ¶54.

[11] *Id.* at ¶58.

[12] *Id.* at ¶¶ 7, 62, 65-66.

[13] *Id.* at 24; and ¶¶ 95-97. The Commission also looks at a merger's impact on its ability to limit market power to avoid damaging competition that is in a developmental stage. *Id.* at 24.

productivity enhancements, or improved incentives for innovation."[14] The applicants must demonstrate in particular whether "the merger will, in relevant markets, remove significant assets or capabilities that could otherwise be used to enhance competition and constrain market power."[15]

In the *Bell Atlantic/NYNEX Order*, the Commission cautioned that future transfer applications would face an increasingly difficult burden of showing that anti-competitive effects of combining major market participants could be overcome by other benefits to market competition — even with FCC-imposed conditions. The Commission stated: "For some potential mergers, the harm to competition may be so significant that it cannot be offset sufficiently by pro-competitive commitments or efficiencies. In such cases, we would not anticipate the applicants could carry their burden to show the transaction, even with commitments, is pro-competitive and therefore in the public interest."[16]

It is now beyond dispute that the applicants have "the burden of demonstrating that the transaction serve[s] the public interest." As the Commission explained in the *Bell Atlantic/ NYNEX Order*: "In our rapidly evolving telecommunications marketplace, they must demonstrate not only the efficiency benefits of the merger, but how the merger would enhance or not retard competition. ***Failure to carry the burden of proof means the commission must deny the applications*** or designate them for hearing.[17]

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[14] *Bell Atlantic/NYNEX Order,* at 24; and ¶100.

[15] *Id.* at 6.

[16] *Id.* at 9-10.

[17] *Id.* at 23.

In the present case, the applicants cannot meet the public interest standard at all, since they have utterly failed to proffer any meaningful information on which to assess any of the criteria described in the standards set by the Commission. While the applicants filed comments to GTE's petition, these comments are no more than self-serving rhetoric disclaiming any anti-competitive impact. They do not provide factual and detailed analysis of the relevant market; identification of the most significant market participants; or objective impact analysis. Moreover, the applicants claim *repeatedly and erroneously* that it is not their burden, but the burden of GTE, CWA, and others to come forward with evidence of any negative impact on market competition. Such claims stand the Commission's standards on their head.

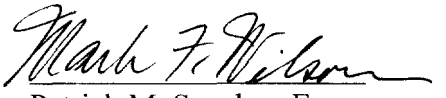
Because the applicants have failed to carry their burden of proof of submitting objective evidence, it is impossible to analyze the relevant product or geographical market; the identification and number of the most significant market participants; or any detrimental impact on competition. Even after these deficiencies have been brought to the applicants' attention, they have not seen fit to provide the requisite analysis and information. Nor have the applicants provided any information to allow for meaningful analysis of any purported benefits of the merger to mitigate anti-competitive factors. Thus, the applications cannot be entertained.

CONCLUSION

For all these reasons, the Communications Workers of America supports the petition of GTE and respectfully requests that the applications of MCI and WorldCom be summarily dismissed for failing to meet the Commission's procedural requirements.

Respectfully submitted,

COMMUNICATIONS WORKERS
OF AMERICA, AFL-CIO, CLC



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Dated this 27th day of January, 1998

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of January 1998, I have served the following parties to this action, and others, with a copy of the foregoing Reply Comments, via first class mail, postage prepaid, at the following addresses:

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